

REMARKS

Claims 1, 4-17, 19-23, 25-38 and 44-47 are pending in the application.

Claims 1, 4-17, 19-23, 25-38 and 44-47 have been rejected.

No Claims have been amended. Reconsideration is respectfully requested in view of the following remarks.

I. **REJECTION UNDER 35 U.S.C. § 103**

Claims 1, 2, 4, 6-9, 11-15, 17-38 and 44 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Carter (US Patent No. 6,266,782) in view of Rogers (US Patent No. 7,110,391).¹ Claims 5, 10, 16, 46 and 47 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Carter (US Patent No. 6,266,782) in view of Rogers (US Patent No. 7,110,391) and further in view of Marchetti (US Patent No. 6,618,398). The rejections are respectfully traversed.

Initially, with respect to all of the rejections based on the main reference Carter, Applicant respectfully disagrees with the Office Action's assertion that Carter discloses the invention substantially as claimed.

The Rogers reference

Applicant notes that the secondary reference that forms the basis of this 103(a) rejection is United States Patent No. 7,110,391 to Rogers. Section 103(c)(1) provides that:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Title 35, United States Code, § 103(c)(1). See also, MPEP § 2146.

¹ Claim 2 was previously canceled. Though not listed, Claim 45 also appears to be rejected under this rejection.

The present application is owned by Nortel Networks Limited, as evidenced by documents recorded at Reel 011348, Frame 0695 (assignment from the inventors to Nortel Networks Limited). The cited reference, US 7,110,391, shows Nortel Networks Limited as the assignee. Based on this, the present application and the cited reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person. Therefore, the Rogers reference is unavailable as prior art under section 103(a) and the Office Action fails to establish a prima facie case of obviousness. Applicant respectfully requests withdrawal of this § 103(a) rejection of all pending Claims 1, 4-17, 19-23, 25-38 and 44-47.

The Marchetti reference

In addition to the above, with respect to the rejection of Claims 5, 10, 16, 46 and 47, Applicant again, and for the third time (see Applicant's prior responses dated November 22, 2004 and March 23, 2007), notes that the third reference that forms the basis of this 103(a) rejection is United States Patent No. 6,618,398 to Marchetti. Section 103(c)(1) provides that:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Title 35, United States Code, § 103(c)(1). See also, MPEP § 2146.

The present application is owned by Nortel Networks Limited, as evidenced by documents recorded at Reel 011348, Frame 0695 (assignment from the inventors to Nortel Networks Limited).

The cited reference, US 6,618,398, shows Nortel Networks Limited as the assignee. Therefore, the present application and the cited reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person. Therefore, the Marchetti reference is unavailable as prior art under section 103(a) and the Office Action fails to establish a prima facie case of obviousness. Applicant respectfully requests withdrawal of this § 103(a) rejection of Claims 5, 10, 16, 46, and 47.

II. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

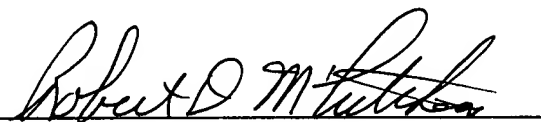
If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *rmccutcheon@munckcarter.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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